

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re REFCO, INC. SECURITIES LITIGATION

Case No. 07-MD-1902 (GEL)

This Document Relates To:

DOCUMENT  
ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 6/25/08

KENNETH KRYSS and CHRISTOPHER STRIDE, as  
Joint Official Liquidators of SPHINX LTD., *et al.*,

Case No. 08-cv-3065 (GEL)

Plaintiffs,

Case No. 08-cv-3086 (GEL)

-against-

**STIPULATION AND ORDER**

CHRISTOPHER SUGRUE, *et al.*,

Defendants.

WHEREAS, plaintiffs Kenneth M. Kryss and Christopher Stride, as Joint Official Liquidators of SPHinx, Ltd., SPHinx Macro Fund SPC, SPHinx Macro, Ltd., SPHinx Managed Futures Fund SPC, SPHinx Long/Short Equity Fund SPC, SPHinx Convertible Arbitrage Fund SPC, SPHinx Fixed Income Arbitrage Fund SPC, SPHinx Distressed Fund SPC, SPHinx Merger Arbitrage Fund SPC, SPHinx Special Situations Fund SPC, SPHinx Equity Market Neutral Fund SPC, SPHinx Strategy Fund, Ltd., SPHinx Plus SPC, Ltd., SPHinx Managed Futures, Ltd., SPHinx Long/Short Equity, Ltd., SPHinx Convertible Arbitrage, Ltd., SPHinx Fixed Income Arbitrage, Ltd., SPHinx Distressed, Ltd., SPHinx Merger Arbitrage, Ltd., SPHinx Special Situations, Ltd., SPHinx Equity Market Neutral, Ltd., and PlusFunds Managed Access Fund SPC, Ltd., Kenneth M. Kryss and Christopher Stride, as assignees of claims assigned by Miami Children's Hospital Foundation, OFI, Green & Smith Investment Management LLC, Thales Fund Management LLC, Kellner

Dileo & Co., LLC, Martingale Asset Management LP, Longacre Fund Management LLC, Arnhold & S. Bleichroeder Advisers LLC, PicTet & Cie, RGA America Reinsurance Company, Deutsche Bank (Suisse) SA, Arab Monetary Fund, Hansard International Ltd., Concordia Advisors LLC, Gabelli Securities, Inc., Citgo Global Custody, and James P. Sinclair, as Trustee of the SPhinX Trust (collectively, "Plaintiffs"), commenced this action in the Supreme Court of the State of New York, New York County, on March 5, 2008 (the "Action"); and

**WHEREAS**, the Action was removed to the United States District Court for the Southern District of New York on March 26, 2008 under two separate proceedings, Case Nos. 08 Civ. 3065 and 08 Civ. 3086, both of which were assigned to United States District Judge Gerard E. Lynch as related cases pursuant to April 8, 2008 Notices of Assignment; and

**WHEREAS**, on April 2, 2008, Bank für Arbeit und Wirtschaft und Österreichische Postsparkasse Aktiengesellschaft ("BAWAG") filed a motion to refer those claims asserted against it in the Action to the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") (the "Motion to Refer"), and such motion remains pending; and

**WHEREAS**, a deposition protocol order (the "Deposition Protocol") and a confidentiality order (the "Confidentiality Order") have been approved by the Court and are in effect in the Refco MDL, *In Re: Refco Securities Litigation*, 07-MD-1902 (GEL) (the "MDL");

**WHEREAS**, BAWAG seeks to participate in the coordinated discovery being conducted in the Refco MDL and pursuant to the Deposition Protocol and the Confidentiality Order for purposes of the Action; and

**WHEREAS**, certain parties contend that BAWAG is already subject to the terms of the Deposition Protocol but see no reason not to agree to this stipulation so confirming;

**IT IS HEREBY STIPULATED AND AGREED**, by and between BAWAG and the undersigned parties, who or which are parties to the Action or other actions that are part of the MDL, through their attorneys, as follows:

1. BAWAG retains all rights to seek referral to the Bankruptcy Court through its Motion to Refer, and plaintiffs retain all rights to seek remand and/or abstention in the Action and to oppose BAWAG's Motion to Refer, and this Stipulation and Order is without prejudice to such rights.

2. Without prejudice to this reservation of rights and subject to any subsequent order of the Court, BAWAG hereby agrees to be a party to the Deposition Protocol for purposes of the Action and is permitted all rights provided thereunder, it being expressly understood that, by entering into this Stipulation, BAWAG does not waive, and expressly reserves, the right to seek relief from the terms of the Deposition Protocol, including, without limitation, an application for relief in the event that BAWAG believes that the deposition process under the Deposition Protocol has not provided full and adequate deposition discovery to BAWAG relating to the matters raised in Plaintiffs' complaint herein, or in any amended version thereof, and/or any defenses thereto.

3. Without prejudice to this reservation of rights, and subject to any subsequent order of the Court, BAWAG hereby agrees to be a party to the Confidentiality Order and is permitted all rights provided thereunder.

4. The Action is deemed a "Related Action" for purposes of the Confidentiality Order.

5. As a party to the Confidentiality Order, BAWAG shall be entitled to receive from each producing party all materials produced, or previously produced, by such party in any action subject to the Deposition Protocol.

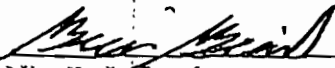
6. BAWAG reserves the right to seek modification of the restrictions on disclosure included in the Confidentiality Order at paragraph 10, as provided for in paragraph 32 of the Confidentiality Order, to the extent that such materials obtained by BAWAG are necessary or useful in related matters or litigations.

7. Nothing contained herein shall waive or act to limit any of BAWAG's or any other party's rights under the Deposition Protocol and Confidentiality Order, all of which are expressly reserved, including any other party's rights to oppose any relief sought by BAWAG pursuant to paragraphs 1, 2, and 6 of this Stipulation and Order.

~~DONE AND ORDERED~~  
~~this \_\_\_\_ day of June, 2008~~


~~Honorable, Gerard E. Lynch~~  
~~United States District Judge~~

Consented and Agreed to by:


  
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8. Upon a request for the production of documents, BAWAG shall be permitted: (a) to identify materials that relate to claims that have not waived Austrian bank secrecy laws, and (b) to withhold such materials pending either a waiver of such laws by the affected Client or pursuant to a determination by the Court with regard to the production of such materials.

*EEJ*  
6/28/08

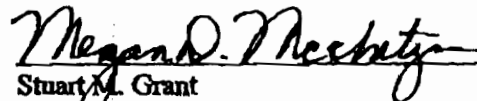
  
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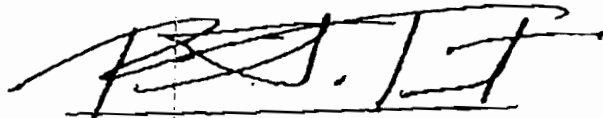
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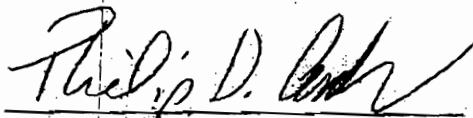
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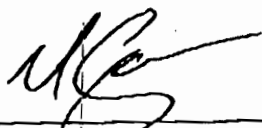
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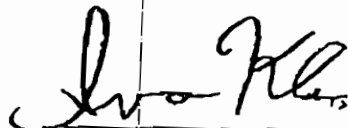
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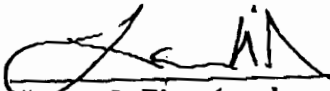
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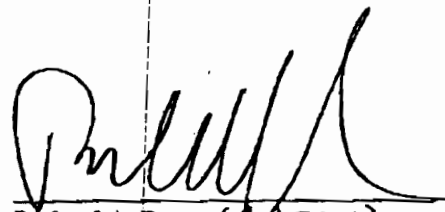
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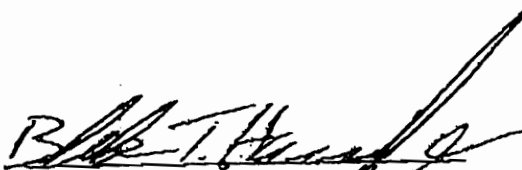
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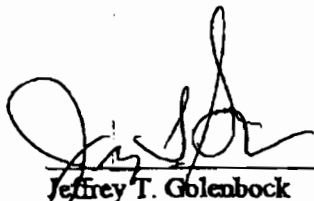
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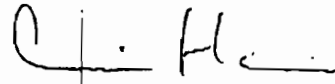
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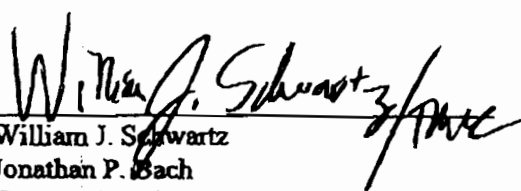
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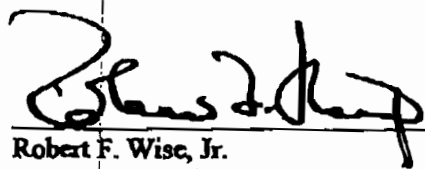
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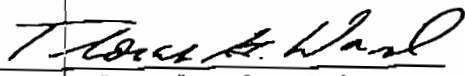
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Dated: Washington, D.C.  
June 10, 2008

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As BAWAG has shown good cause for entry of this order, and has obtained consent of all but one relevant party, and as the objecting party has not proffered a substantive relevant objection to the order, but has simply withheld consent in retaliation for BAWAG's refusal to consent to ~~an~~ unrelated relief sought by the objecting party, the instant stipulation and order is approved.

SO ORDERED

  
GERARD E. LYNCH, U.S.D.J.

6/25/08